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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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G. RICARDO SALAS,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF GUAM

---

SUPPLEMENTAL BRIEF FOR THE APPELLEE

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No. 21401

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In our main brief, we argued that the Government of Guam may well have perfectly valid reasons for not bringing suit on a claim that may be legally meritorious, and has the discretion to refrain from suing. Recent events have confirmed that it may be more advantageous for the Government of Guam to seek reimbursement for its employees' moving expenses from Congress rather than the courts. On August 30, 1967, the Senate passed the Guam Development Fund Act of 1967. 113 Cong. Rec. S12559 (daily ed.), August 30, 1967. This Act would authorize the appropriation of \$5,000,000 to establish a revolving fund for loans and loan guarantees to promote the

development of private enterprise and private industry in Guam. A major justification used to support the bill was the fact that Congress had not appropriated funds pursuant to Section 26(c) of the Organic Act to reimburse the Government of Guam for its employees' moving expenses. Thus the report of the Committee on Interior and Insular Affairs on the Guam Development Act, Senate Report 551, 90th Cong., 1st Sess., at 9-10 sets forth a resolution of the Guam legislature which requests Congress "to favorably consider the pending legislation which sets up an economic development fund for the Territory of Guam, and in determining the amount of such fund to consider using the amount the Government of Guam has paid to date in underwriting the off-island transportation costs that are the obligation of the United States \* \* \*."<sup>1/</sup> A letter from Assistant Secretary of the Interior Anderson to the Chairman of the Senate Committee on Interior and Insular Affairs, in supporting the bill, also pointed out that the failure of Congress to appropriate funds for moving expenses "goes a long way in answering those who might suggest that [the Development Fund Act] is an extraordinary gift for the Government of Guam." Senate Report No. 551, 90th Cong., 1st Sess. at 6. The letter further explained:

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<sup>1/</sup> A copy of this resolution, as reproduced in S.Rep. 551, 90th Cong., 1st Sess. at 9-10, is set forth, infra, at pp. 5-6.

For the past several years the government of Guam, in connection with proposed legislation looking toward the popular election of the Governor of Guam, has taken the position that it is entirely willing to continue to bear the costs chargeable to the United States under the terms of section 26(c), and that it not only would not object to, but recommended the repeal of that section of law. Thus the government of Guam has indicated that it is ready and willing to assume in its own right the burden which it has carried since 1952. Similarly this Department has recommended the repeal of section 26(c) as being consistent with a policy of full local responsibility for local governmental activities comporting with our basic policy of seeking to give the territories the fullest measure of self-government under our Constitution.

While we do not suggest that an enforceable debt is owed the government of Guam by the United States, it does seem to us that in the face of the statutory provisions which have remained in the code for so long, along with the fact that neither this Department nor the federally appointed Governors over the years have sought funds for the purpose specified and that the government of Guam has, even though from necessity, borne this burden with the most modest of complaint, argues persuasively for recognition of these circumstances, and reimbursement in such amount as may be determined to be appropriate. We suggest that such an amount would be \$7 million.

Senate Report No. 551, 90th Cong., 1st Sess., at 7. <sup>2/</sup>

The Government of Guam may well feel that it would be more advantageous to obtain economic development legislation rather than to seek a money judgment against the United States.

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2/ As we have noted, the amount authorized by the bill as it passed the Senate was, despite the suggestion of the Department of the Interior, \$5,000,000 rather than \$7,000,000.

The Senate has passed legislation which repeals Section 26(c) of the Organic Act of Guam. This is part of the bill which provides for a popular election of the Governor of Guam. S. 449, 90th Cong., 1st Sess., 113 Cong. Rec. S6477 (daily ed.), May 9, 1967.

In any event, the decision as to whether to seek such a judgment belongs to the Government of Guam, not to plaintiff.

Respectfully submitted,

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Washington, D. C. 20530.



RESOLUTION NO. 309 OF THE NINTH GUAM LEGISLATURE, 1967  
(FIRST), REGULAR SESSION, INTRODUCED BY THE COMMITTEE ON  
RESOURCES AND DEVELOPMENT

[Senate Report No. 551, 90th Cong., 1st Sess., at 9-10]

RELATIVE TO RESPECTFULLY PETITIONING AND MEMORIALIZING THE  
CONGRESS OF THE UNITED STATES TO ACT FAVORABLY UPON THE  
PENDING ECONOMIC DEVELOPMENT FUND BILL FOR THE TERRITORY  
OF GUAM, AND IN DECIDING ON THE AMOUNT OF SUCH FUND, TO TAKE  
INTO CONSIDERATION THE LOCAL MONEYS SO FAR SPENT ON BEHALF  
OF THE FEDERAL OBLIGATION TO TRANSPORT OFF-ISLAND PERSONNEL  
TO THE ISLAND AS SET FORTH IN THE ORGANIC ACT OF GUAM

Be it resolved by the Legislature of the Territory of Guam:

Whereas there is now pending before the appropriate committees  
of the U.S. Congress, legislation which would set up an economic  
development fund to be used by the territory of Guam in developing  
its civilian economy now so exclusively dependent upon military  
expenditures; and

Whereas the need of such a fund is great, there being many  
possibilities for economic development in Guam which either  
require costly investigation or long-term investment before  
being realized; and

Whereas, in addition, the experience of Taiwan and Okinawa has  
demonstrated that when such an economic fund is set up, it serves  
as seed money, which germinates growth throughout the economy  
and is thus repaid many times over in the way of additional  
revenues for both the government and the people; and

Whereas, in setting up such a fund, and in determining the  
appropriate amount thereof, the Congress of the United States  
might well bear in mind that although section 26(b) of the  
Organic Act of Guam (sec. 1421d(c), title 48, United States  
Code) requires that the transportation costs of bringing off-  
island employees of the government of Guam into and from the  
territory be borne by the United States, the government of Guam  
has from the inception of civil government absorbed this expense  
which has so far totaled approximately \$7 million, which would  
therefore appear to be an appropriate and fair sum with which to  
set up the economic development fund, representing as it does, a  
debt, of sorts, running from the United States to the government  
of Guam: Now, therefore, be it

Resolved, That the Ninth Guam Legislature does hereby on behalf of the people of Guam respectfully petition and memorialize the Congress of the United States to favorably consider the pending legislation which sets up an economic development fund for the territory of Guam, and in determining the amount of such fund, to consider using the amount the government of Guam has paid to date in underwriting the off-island transportation costs that are the obligation of the United States; and be it further

Resolved, That the speaker certify to and the legislative secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the President of the Senate, to the Speaker of the House of Representatives, to the chairman of the Senate Interior and Insular Affairs Committee, to the chairman of the House Interior and Insular Affairs Committee, to the Secretary of the Interior, to Guam's Washington representative, and to the Governor of Guam.

Duly and regularly adopted on the 11th day of July 1967.

J. C. ARRIOLA,  
Speaker.

F. T. RAMIREZ,  
Legislative Secretary.



CERTIFICATE

I certify that, in connection with the preparation of this supplemental brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing supplemental brief is in full compliance with those rules.

*Robert V. Zener*

ROBERT V. ZENER,  
Attorney,  
Department of Justice,  
Washington, D. C. 20530.

AFFIDAVIT OF SERVICE

DISTRICT OF COLUMBIA }  
CITY OF WASHINGTON } ss.

ROBERT V. ZENER, being duly sworn, deposes and says:

That on the 5th day of October, 1967, he caused three copies of the foregoing supplemental brief for appellee to be served by air mail, postage prepaid, upon counsel for appellant:

Barrett, Ferenz, Trapp & Gayle, Esquires  
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*Robert V. Zener*

ROBERT V. ZENER,  
Attorney,  
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Washington, D. C. 20530.

Subscribed and Sworn to before me this 5th day of October, 1967.

[Seal]

*Angeline Johnson*  
NOTARY PUBLIC

My Commission expires April 14, 1972.

